

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

STEPHON CHAPMAN

PLAINTIFF

V.

CIVIL ACTION NO.4:07CV52-WAP-JAD

STATE OF MISSISSIPPI, et al.

DEFENDANTS

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

The defendants Vicki Price and Howard Johnson have moved the court to dismiss them from this action or alternatively for summary judgment (Doc. 45). The plaintiff has filed no response in opposition. Because the defendants have submitted medical records, incident reports and affidavits, the motion is treated as one for summary judgment.

Stephon Chapman fractured his foot playing basketball in the evening of Jun 27, 2006. He was finally advised that his foot was fractured sixty-five days later. There was a 110 day delay between the injury and treatment. During this delay, Chapman was bounced between the Leake County Correctional Facility, Central Mississippi Correctional Facility and Unit 29 in Parchman. It apparently took several transfers and two months to get an x-ray taken and read to determine the foot had been fractured.

Two of the defendants, both from the Leake County Correctional Facility, have sought summary judgment. The version of events given by these defendants varies from Chapman's version. Both are explicitly accused in his pleadings, which are under oath, of failing to provide pain medications to Chapman, for an injury that reasonably would be expected to be very painful. The nurse in her affidavit refers to her initial actions in referring Chapman to Central Mississippi Correctional Facility, but is silent about her response to the alleged prolonged delay in treatment. During this extended time, Price per Chapman did not provide pain medications. There are clearly

genuine issues of material fact which cannot be resolved by summary judgment. F.R.Civ.P. 56. In any event, the court has the discretion, which it should exercise here, to allow the plaintiff's claims to proceed to trial. *See, Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) ("Neither do we suggest ... that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial."). The defendant's motion for summary judgment is denied.

SO ORDERED this the 27th day of May, 2008.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE